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COMMONWEALTH OF VIRGINIA

STATE CORPORATION COMMISSION

AT RICHMOND, DECEMBER 19, 2000

COMMONWEALTH OF VIRGINIA, ex rel.

STATE CORPORATION COMMISSION

CASE NO. PUE990786

Ex Parte: In the matter
concerning Rules implementing
the State Corporation Commission's
authority to enforce the
Underground Utility Damage
Prevention Act

ORDER ADOPTING RULES

This Order promulgates revised rules for the enforcement of the Underground Utility Damage Prevention Act. Section 56-265.30 of the Code of Virginia permits the Commission to promulgate any rules "necessary to implement the Commission's authority to enforce" the Underground Utility Damage Prevention Act ("Act"), Chapter 10.3 (§ 56-265.14 et seq.) of Title 56 of the Code of Virginia. Pursuant to the statutory authority granted to it by the Act in 1994, the Commission adopted Rules for the Enforcement of the Underground Utility Damage Prevention Act.¹ Since the initial Rules were promulgated in 1994, the

¹ See Commonwealth of Virginia, ex rel. State Corporation Commission, Ex Parte: In the matter of adopting rules necessary to implement the State Corporation Commission's authority to enforce the Underground Utility Damage Prevention Act, Case No. PUE940071, 1994 S.C.C. Ann. Rept. 422 (Order Adopting Procedural Rules for Enforcement of the Underground Utility Damage Prevention Act, Dec. 20, 1994).

Commission, the Commission Staff ("Staff") and the Advisory Committee² have gained considerable experience in the enforcement of the Act, and, through interaction with operators, excavators, the notification centers, contract locators, and the public recognize that the Commission's current Rules should be revised, expanded, and clarified. In light of the time that has elapsed since the adoption of the Rules to Enforce the Underground Utility Damage Prevention Act in 1994, a full review of these rules is timely.

To facilitate the review of currently effective Rules, we entered an Order Establishing Investigation and Inviting Comments on December 13, 1999. This Order solicited public comment on a number of issues (Appendix A to the Order) relating to the enforcement of the Act. It directed the Division of Energy Regulation ("Division") to publish notice of the rulemaking in newspapers of general circulation throughout the Commonwealth and to forward the Order and accompanying list of issues to the Virginia Register of Regulations for publication. The Order instructed Staff to file a report summarizing and responding to the comments filed in this proceeding and to

² The Advisory Committee ("Committee") includes representatives from the following stakeholder groups: utility operators, notification centers, localities, the Virginia Department of Transportation, Board of Contractors, underground line locators, and the Commission Staff. It is established pursuant to § 56-265.31 of the Code of Virginia, and charged with, among other things, reviewing reports of probable violations of the Act and making recommendations on enforcement actions to the Commission.

propose appropriate revisions, as necessary, to the Rules that were adopted in 1994.

Fifty-nine comments were filed in response to the December 13, 1999, Order Establishing Investigation and Inviting Comments.

The Staff filed its report on May 26, 2000. This report summarized the filed comments, discussed the development of the underground utility damage prevention program in Virginia, reviewed national "best practices" relative to damage prevention, and proposed specific revisions and additions to the Rules for Enforcement of the Underground Utility Damage Prevention Act adopted in Case No. PUE940071.

On June 14, 2000, the Commission entered an Order inviting interested persons to file comments or request a hearing on the Staff's proposed rules for enforcement of the Act that were attached to that Order. Comments and requests for hearing were to be filed on or before August 1, 2000.

The following parties filed comments concerning the proposed rules: the Associated General Contractors of Virginia, Inc. ("AGC"); Campbell County Utilities and Service Authority ("Campbell County"); Roanoke Gas Company ("Roanoke"); Washington Gas Light Company ("WGL"); Kentucky Utilities Company d/b/a Old Dominion Company ("KU"); Columbia Gas Transmission ("Columbia Transmission"); Virginia Electric and Power Company ("Virginia

Power"); Old Dominion Electric Cooperative and its member distribution cooperatives,³ together with the Virginia, Maryland & Delaware Association of Electric Cooperatives (collectively, "the Cooperatives"); Columbia Gas of Virginia, Inc. ("Columbia") and Virginia Natural Gas, Inc. ("VNG"); Virginia Telecommunications Industry Association ("VTIA"); Appalachian Power Company, d/b/a American Electric Power ("AEP-VA"); Cox Virginia Telecom, Inc. ("Cox"); Virginia Cable Telecommunications Association ("Cable Association"); Fairfax County Public Works ("Fairfax County"); Capco Construction Corporation ("Capco"); and RCN Telecom Services of Virginia, Inc. ("RCN").

Virginia Power requested a hearing on the proposed Rules as part of its comments. Accordingly, by Order of September 5, 2000, we scheduled a public hearing for October 23, 2000, and directed the Staff to prefile its direct testimony on September 22, 2000, and parties to file either testimony or statements adopting their comments on October 2, 2000. Parties planning to adopt their comments and not planning to add any additional comments or testimony were directed to notify the

³ A & N Electric Cooperative, BARC Electric Cooperative, Central Virginia Electric Cooperative, Community Electric Cooperative, Craig-Botetourt Electric Cooperative, Mecklenburg Electric Cooperative, Northern Neck Electric Cooperative, Inc., Northern Virginia Electric Cooperative, Powell Valley Electric Cooperative, Prince George Electric Cooperative, Rappahannock Electric Cooperative, Shenandoah Valley Electric Cooperative, and Southside Electric Cooperative.

Commission in writing of such intent on or before September 29, 2000. The Staff was further ordered to prefile its rebuttal testimony, if any, by October 13, 2000.

A public hearing on the proposed Rules was convened before the Commission on October 23, 2000. The following counsel noted an appearance at the proceeding: Kenneth Tawney, Esquire, counsel for Columbia Transmission; Senator Malfourd Trumbo, counsel for Roanoke; Kodwo Ghartey-Tagoe, Esquire, counsel for Virginia Power; Robert L. Omberg, Esquire, counsel for the Cooperatives; Robert M. Gillespie, Esquire, counsel for Cox; Richard D. Gary, Esquire, counsel for the VTIA; Michael J. Quinan, Esquire, counsel for AEP-VA; James S. Copenhaver, Esquire, counsel for Columbia; Robert B. Evans, Esquire, counsel for WGL; and Sherry H. Bridewell, Esquire, counsel for the Commission Staff. Proof of notice of the rulemaking was received into the record as Exhibit A.

By agreement of counsel, all testimony was admitted into the record without cross-examination. Thomas A. Dick, appearing on behalf of the Municipal Electric Power Association of Virginia ("MEPAV"); Gray Pruitt, an excavator; and Jim Stepahin, Executive Director of the Heavy Construction Contractors Association in Northern Virginia, testified as public witnesses. At the conclusion of the proceeding, counsel offered closing statements based on the evidence received in this matter.

NOW THE COMMISSION, upon consideration of the evidentiary record, closing statements, and the applicable law, is of the opinion and finds that the Rules set out in Attachment A attached hereto should be adopted, effective July 1, 2001. Our revisions to the Rules have been made after consideration of the proposals from the Staff and parties to this proceeding, including the views expressed in closing statements. We commend the parties for their cooperation in narrowing the issues that remain for deliberation. While we will not comment on all of the revisions we have made to the Rules originally proposed by the Staff, we will address the following provisions of the amended Rules that, in our opinion, merit additional discussion: Rules 20 VAC 5-309-40 B;⁴ 90; 100; 110; 120; 140 1; 160 K; 160 L; 160 M, N, and O; 170; 200 6; and 210. Minor revisions have been made to certain of the other rules in Attachment A to prepare the rules for publication in the Virginia Register of Regulations.

Rule 40 B - Role of the
Advisory Committee

In his rebuttal testimony (Exhibit MT-2), Staff witness Tahamtani proposes revisions to Rule 40 B to address concerns

⁴ For ease of reference, the designation "20 VAC 5-309" will be dropped. The reader should assume this is the title and chapter for all the rules discussed in this Order unless specifically stated otherwise. For example, when the Order refers to "Rule 40 B", it should be understood that this refers to 20 VAC 5-309-40 B.

expressed by a number of parties, including Columbia and AEP-VA, about the role of the Advisory Committee in instances where Staff, but not the Advisory Committee, recommends enforcement action against a probable violator. In closing statements presented at the October 23, 2000, hearing, Columbia and Cox agree that the Rule set out on page 2 of Exhibit MT-2 properly balances the role of the Staff and the Advisory Committee in making recommendations to the Commission concerning enforcement actions for alleged violations of the Act. Cox cautions that "there is still a hazard that something will be lost in the translation when the Staff places the Committee's recommendations and reasons" before the Commission. Oct. 23, 2000 Transcript at 114-15.⁵

We agree that Rule 40 B, as revised in witness Tahamtani's rebuttal testimony, properly balances the role of the Staff and the Committee when disagreement exists between the two on whether enforcement action should be undertaken. The Advisory Committee serves as a valuable resource to the Commission, and we commend the Committee for its careful and conscientious review of alleged violations of the Act. Consequently, we will adopt Rule 40 B as it appears in Staff witness Tahamtani's rebuttal testimony. It is our expectation that the Division

⁵ Hereafter all references to the transcript will be to "Tr. at ____".

will fully and fairly relate to us the reasons for the Committee's recommendations in circumstances where the Staff and the Advisory Committee disagree over whether enforcement action should be taken against a probable violator.

Rule 90 - Data Requests to the
Division of Energy Regulation

Proposed Staff Rule 90 provides that:

Upon request, the Division shall provide to any person information or documents gathered by the Division in the course of the Division's investigation of probable violations under the Underground Utility Damage Prevention Act. Such documents or information may include a list of violations and probable violations of the Act, provided that such information or documents has (sic) not been determined by the Commission or a court of competent jurisdiction to be confidential or privileged.

The Staff supports its proposed Rule, relying on § 12.1-19 2 of the Code of Virginia⁶ and the public manner in which Advisory Committee meetings are conducted.

⁶ Section 12.1-19 2 of the Code of Virginia provides in pertinent part:

The clerk of the Commission shall:

* * *

2. Subject to the supervision and control of the Commission, have custody of and preserve all of the records, documents, papers, and files of the Commission, or which may be filed before it in any complaint, proceeding, contest, or controversy, and such records, documents, papers, and files shall be open to public examination in the office of the clerk to the same extent as the records and files of the courts of this Commonwealth; . . .

AGC's comments urge the Commission to consider carefully the confidentiality of information gathered as part of investigations of probable violations of the Act. Virginia Power asserts that Rule 90 is unnecessary and would discourage the open exchange of information necessary to the Staff's investigative and administrative role under the Act. Virginia Power further contends that liberal dissemination of information gathered in investigations of alleged violations, as proposed in the Rule, could result in abuse by insurance carriers, plaintiff's attorneys, and other persons. KU maintains that the information disseminated pursuant to the Rule should be limited to information or documents addressing actual violations of the Act.

After considering the comments of the parties, we recognize that the candid exchange of information is a valuable tool in the investigation of probable violations and enforcement of the Act. Advisory Committee meetings are and have been open to the public. Information is, and has been, openly and freely exchanged at these meetings. The current informal practices governing access to information gathered in the enforcement of the Act do not appear to impose any undue burdens on stakeholders in the enforcement process. Consequently, we will permit these informal practices to continue, unfettered by the adoption of a rule.

Rule 100 - Mandatory Reporting
Requirements for Electric Operators

Proposed Rule 100 (new Rule 90)⁷ requires electric operators to report to the Division all probable violations of the Act, involving damages affecting 1,000 or more customer meters or resulting in injury requiring in-patient hospitalization or resulting in a fatality. AEP-VA, Virginia Power, and the Cooperatives support this Rule.

MEPAV asserts, however, that there is no clear authority for the Commission to mandate reporting by municipalities as proposed in the Rule. It argues that cities and towns are governmental bodies with a strong public safety obligation to its citizens and sufficient statutory authority to deal with those who violate the Act in a way that is greater than that provided to the Commission under the Act. Tr. at 7-8. It recommends that Rule 100 be amended to exclude cities and towns from the reporting requirement. Tr. at 7.

"Operator" is defined in § 56-265.15 of the Code of Virginia to mean "any person who owns, furnishes or transports materials or services by means of a utility line." Section 56-265.15 defines "person" to include municipalities or other political subdivisions, governmental units, departments, or

⁷ Because the preceding Rule governing data requests (old Rule 90) has been eliminated, the remaining rules have been renumbered sequentially. The renumbered rules are referenced in the Order as "new Rule ____".

agencies. Thus, municipalities and towns are clearly "operators" for purposes of the Act. Rule 100 properly applies to "operators" inasmuch as the Act itself does not distinguish between municipal and non-municipal operators in terms of an operator's responsibilities under the Act. Section 56-265.32 A expressly prohibits the Commission from imposing civil penalties on any county, city, or town but requires it to inform counties, cities and towns of reports of alleged violations of the Act, involving the locality. Therefore, in the spirit of § 56-265.32 A, should the Commission become aware that a locality has not complied with any of the attached applicable rules, including Rule 100 (new Rule 90), we will direct our Staff to inform the locality of its noncompliance with that Rule.

We encourage operators of electric systems that are cities, towns, and counties to report damages to their underground utility lines affecting 1,000 or more customer meters, resulting in an injury requiring in-patient hospitalization, or resulting in a fatality. In this way, the Commission's authority to enforce the provisions of the Act may complement the actions taken by localities as they seek to protect the citizens of the Commonwealth and minimize damage to their underground utility lines.

Rule 110 - Mandatory Reporting Requirements
for Telecommunications Operators

Rule 110 (new Rule 100) would require all telecommunications operators to report all probable violations of the Act to the Division, involving damages to outside facilities affecting 1,000 or more access lines. As noted in Witness Tahamtani's direct testimony, the "1,000 or more access line" threshold was selected since significant outages of this magnitude are now reported to the Commission's Division of Communications. Exhibit MT-1 at 14-15. Roanoke and WGL support mandatory reporting requirements for all nongas operators, including telecommunications operators.

The VTIA, however, opposes new Rule 100 and asserts that the telecommunications industry has spent millions of dollars installing "self-healing rings" which, when damaged, divert telecommunications traffic in another direction. Tr. at 117-18. It is concerned that telecommunications companies may be in technical violation of the Rule proposed by the Division because these companies may not know that an outage affecting service has occurred. Id.

In order to enforce the requirements of the Act, the Commission must be made aware that a probable violation has occurred. The Rule, as proposed, assumes that a telecommunications operator knows that damage to underground

lines affecting 1,000 or more access lines has occurred. We find the mandatory reporting threshold of damage to outside plant facilities affecting 1,000 access lines reasonable and consistent with the existing service criteria applied to local exchange telephone companies. We will therefore adopt Rule 110 (new Rule 100), with the minor modification set out below:

All operators of telecommunication utility lines shall report all probable violations of the Act to the division involving damages to [underground] outside facilities affecting 1,000 or more access lines.⁸

Rule 120 - Mandatory Reporting
for Cable TV and Cable
TV/telecommunications Operators

AGC comments that Rule 120 (new Rule 110) should be eliminated because damages to cable television lines do not constitute safety hazards. July 31, 2000, Comments of AGC at 1. As noted by the Staff and other case participants, cable operators participate in the Emergency Alert System used to notify the public of national emergencies. Indeed, the cable industry has often asserted that cable service is an "essential public service." See Exhibit MT-1 at 16; Exhibit ALP-14 at 2-3. Tr. at 96-97.

Cable television operator Cox filed comments supporting reporting requirements applicable to damages affecting 1,000 or

⁸ Brackets indicate language added to a rule. Language that has been deleted from a rule is struck through.

more customers rather than access lines. Exhibit CVT-9 at 4. Rule 120, as noted in Exhibit MT-1 at 16-17, refers to customers and not access lines as the necessary threshold for reporting damages to the Division. We will adopt Rule 120 (new Rule 110) as proposed by the Staff in Exhibit MT-1 and supported by Cox, with the minor modification set out below:

All operators of cable TV and cable TV [~~and~~] telecommunication utility lines shall report all probable violations of the Act to the division involving damages to [underground] outside plant facilities [~~impacting~~ affecting] 1,000 or more customers.

Reporting Requirements for
Jurisdictional Gas Utilities

Presently, jurisdictional gas utilities report all probable violations involving their underground lines to the Division. Columbia has requested that the Division enter into a dialogue with it and other jurisdictional natural gas utilities regarding possible exemptions to the policy requiring that jurisdictional gas utilities report all probable violations. It urges the Commission not to adopt a rule on this issue at this time. Tr. at 132-133.

In its rebuttal testimony (Exhibit MT-2 at 7), the Staff has noted that it is prepared to begin a dialogue with the gas industry to determine if the current reporting requirement may be altered without compromising public safety. It has also asked that we refrain from adopting a rule relative to reporting

requirements for gas operators in this proceeding to allow this dialogue to take place. Although it is not a gas utility that is subject to the Commission's pipeline safety regulation, Columbia Transmission has also requested that it be permitted to participate in this dialogue. Tr. at 92.

We note that excavation damage to pipelines remains one of the primary causes of pipeline accidents. Preventing or significantly decreasing these damages reduces the risk of loss of life, injuries, property damage, environmental damage, economic loss, and service outages. Exhibit MT-1 at 18. Damages per 1,000 tickets to gas pipelines have declined by 47 percent since 1996. Exhibit MT-1 at 19. The primary reason for the reduction of incidents involving gas pipelines is the reporting of all damages and the enforcement of the Act relative to these incidents. Exhibit MT-1 at 19 and Exhibit RCI-12 at 3.

The informal Staff policy requiring reporting of all damages by jurisdictional gas utilities has obviously been successful because of the cooperation of all involved. We are comfortable with permitting Staff and jurisdictional gas pipelines to discuss potential modifications to this policy. Therefore, consistent with the Staff's and Columbia's requests, we will not adopt a formal rule governing the reporting requirements by the gas utilities. Instead, we will direct the Staff to initiate a dialogue with jurisdictional gas utilities

concerning the merits of creating exemptions to the reporting requirements now applied to these utilities. It is our expectation that the Staff will report to us the outcome of this dialogue. Columbia Transmission may also participate in these discussions.

Rule 140 1 - Dispatched Personnel
Responding to an Emergency

Proposed Rule 140 1 (new Rule 130 1) would require dispatched crews responding to an emergency to notify the notification center and request an emergency locate of underground utility lines at the earliest reasonable opportunity. AEP-VA comments that the Rule should be clarified to permit the excavator or operator to notify the notification center since personnel actually responding to the emergency are likely to be focused upon the exigencies of emergency circumstances. Exhibit TLM-11 at 8. Staff responds that those who dispatch personnel or crews to an emergency may not be familiar with the field procedures used to respond properly to the emergency situation at hand, e.g., the extent of excavation. They may not be able to describe the circumstances existing in the field fully to the notification center. Exhibit MT-2 at 4-5. We agree with the Staff and will adopt Rule 140 1 (new Rule 130 1) as set out in Exhibit MT-1.

Rule 160 K - Validity of Markings

Rule 160 K (new Rule 150 K) defines how long markings shall be valid at an excavation site. Pursuant to this Rule, markings indicating the horizontal location of an underground utility line shall be valid for 15 days from the time of notification by the excavator or until one of the following events occurs:

- (1) the markings become faded, illegible, or destroyed; or
- (2) if the markings were placed in response to an emergency, and the emergency condition has ceased to exist.

Cox comments that this Rule should not be read contrary to § 56-265.17 C. Cox maintains that, consistent with that statute, the excavator should be responsible for calling the notification center for remarking. Tr. at 115.

This Rule will not be applied contrary to § 56-265.17 C, and is consistent with the requirements of that statute. Section 56-265.17 C provides that an excavator's notification is valid for fifteen working days from the time of notification to the notification center, and provides for the remarking of lines if they become illegible. Rule 160 K (new Rule 150 K) accomplishes the same result. The Rule is also consistent with § 56-265.24 B of the Code of Virginia, which requires an excavator to request remarking if markings become illegible due to time, weather, construction, or other causes. Most importantly, the Rule supplies an administrative detail

clarifying when markings made during an emergency condition become invalid. To clarify this portion of new Rule 150 K, we will revise it as follows:

2. [~~An~~ If the markings were placed in response to an] emergency[, ~~condition~~ and the emergency condition ~~no longer exists~~ has ceased to exist].

Rule 160 L - Requiring Indication of
the Number of Utility Lines of the
Same Type Within the Same Trench

As originally proposed, Rule 160 L (new Rule 150 L) requires that if a single mark is used to mark utility lines of the same type within a trench, the number of utility lines within the trench must be indicated at every other mark. AEP-VA and other commentators observe that operator records are not always sufficiently detailed to permit the operator to know how many lines are in a trench. See, e.g., Exhibit TLM-11 at 10-11. MEPAV comments that locating techniques are not accurate enough to identify the number of utility lines within a trench. Tr. at 9.

In its rebuttal testimony, Staff addresses these commentators' concerns by revising Rule 160 L to provide

Where permitted by the operator's records,
all utility lines of the same type in the
same trench owned by the same operator shall
be marked individually, or by a single mark.
If a single mark is used, the number of the
utility lines shall be indicated at every
other mark.

Exhibit MT-2 at 5 (emphasis added). This revision will require operators whose records identify the number of utility lines in a trench to provide that information to excavators. It also accommodates the concerns of those operators that currently do not maintain such information.

We agree that this Rule is an appropriate means of permitting operators to fulfill their duty under § 56-265.19 A of the Code of Virginia to mark the approximate horizontal location of their underground utility lines. We will adopt the Staff's proposed Rule as set forth in Exhibit MT-2. We recognize the limitations of locating equipment, but believe that this additional information, if available in an operators' records, should be communicated to the excavator through the markings made during locates as a further means of avoiding damage to multiple underground utility lines of the same type installed in the same trench.

Additionally, as part of the requirements of Rule 210 (new Rule 200), the operators must maintain information relative to the number of utility lines of the same type in the same trench. This information shall be used to comply with Rule 160 L (new Rule 150 L) for underground utility lines installed after July 1, 2001.

Rule 160 M - The Requirement that
Operators or Contract Locators Use

All Information Necessary to Mark
Their Facilities Accurately

As set out in Exhibit MT-1, Rule 160 M (new Rule 150 M) requires operators or their contract locators to use all information necessary to mark their underground facilities accurately. Exhibit MT-1 at 33-34. Columbia and VNG support this Rule. Id. Virginia Power contends that this Rule is unnecessary and too vague. Tr. at 105-106.

We disagree with Virginia Power. As Exhibit CGV/VNG-13 recognizes, a prudent locator should be expected to utilize all information necessary under the circumstances to assure accurate markings. The appropriate records to be relied upon will vary with the locator's experience, type of underground material to be located, extent and availability of various records, and vintage of maps. In conjunction with the locator's expertise, use of records, documents, and other information should enable the locator to locate accurately underground utility lines under the circumstances that may be unique to each locate. We will adopt Rule 160 M (new Rule 150 M) as set out on page 34 of Exhibit MT-1.

Rule 160 N - Requirements to Mark
Underground Pipelines Greater than
12 Inches in Diameter

Proposed Rule 160 N (new Rule 150 N) provides that markings of an underground pipeline greater than 12 inches in nominal

outside dimension shall include the size of the pipeline in inches at every other mark. This Rule would provide additional information to an excavator about an underground pipeline so that the excavator may properly protect and support the pipeline during excavation. Gray Pruitt, an excavator, testified that this rule should be revised to require identification of pipeline circumferences greater than two to four inches in diameter. Tr. at 27-28. It is unnecessary to refine the rule in the way Mr. Pruitt proposes at this time.

Section 56-265.24 A requires excavators to take all reasonable steps necessary to properly protect, support, and backfill underground utility lines. This protection, set out in § 56-265.24 A, includes, among other things, hand digging "starting two feet of either side of the extremities of the underground utility line".

The proposed rule requires locators to provide the excavator with the size in inches of large pipelines, i.e., those 12 inches and greater in diameter, so that the excavator clearly understands how far to hand dig on either side of the marked utility line. We find that the Rule's marking requirement for a pipeline twelve inches or greater in dimension properly recognizes the need for protection of a large pipeline and avoids the imposition of unnecessary burdens on operators or contract locators marking underground pipelines. We will

therefore adopt Rule 160 N (new Rule 150 N) as the Staff has proposed.

Rule 160 O - Horizontal
Marking Symbols for Duct
Structures and Conduit Systems

Proposed Rule 160 O (new Rule 150 O) requires that duct structures and conduit systems be marked in accordance with the horizontal marking standards for such structures and systems set out in the National Utility Locating Contractors Association's ("NULCA") Standards. Mr. Pruitt, an excavator, testified that national standards such as these are not as "detailed" as they need to be. Tr. at 30-31.

The recognition of NULCA as an appropriate national standard merits further discussion. In 1998, Congress directed the Federal Department of Transportation to identify "best practices" for the prevention of damage to underground facilities and to assure their safe operation. For nearly a year, experts, representing multiple industries, community interests, government, and professional representatives worked in teams to identify, define, and agree on the best practices governing all aspects of damage prevention. The integrated report on this effort, "Common Ground, Study of One-Call Systems and Damage Prevention Best Practices" ("Common Ground Report") was issued on June 30, 1999, and contains 130 damage prevention "best practices". May 26, 2000, Staff Report at 13-14, attached

as Appendix 1 to Exhibit MT-1 (hereafter "Staff Report"). The Common Ground Report recognizes NULCA standards as an appropriate model to reduce confusion for excavators working in multiple regions across the country. Staff Report at 25. Indeed, the Staff and others submitting comments note that additional marking standards should help to reduce damage to underground utility lines by reducing errors associated with misinterpreting locate marks. Id. at 25. While there is room to argue about any set of standards, as Mr. Pruitt does, the additional detail provided by the NULCA standards will be useful. We believe these standards represent the industry's best efforts to date in this area. We will, therefore, adopt proposed Rule 160 O (new Rule 150 O).

Rule 170 - Clear Evidence of
a Utility Line

Proposed Rule 170 (new Rule 160) provides that "clear evidence" as used in § 56-265.24 C of the Act includes, but is not limited to, visual evidence of an unmarked utility line, knowledge of the presence of a utility line, or faded marks from previous marking of a utility line. Public witness Pruitt asserts that the Rule requires clarification to ensure that a private irrigation line does not constitute clear evidence. He maintains that the Rule needs to be more specific on what constitutes "clear evidence". Tr. at 36-37.

Section 56-265.24 C of the Act provides that

If, upon arrival at the site of a proposed excavation, the excavator observes clear evidence of the presence of an unmarked utility line in the area of the proposed excavation, the excavator shall not begin excavating until an additional call is made to the notification center for the area pursuant to subsection B of § 56-265.17.

The Rule proposed by Staff provides guidance as to what may constitute "clear evidence" of an unmarked utility line, i.e., visual evidence, knowledge of the presence of a utility line, or faded marks from the previous marking of a utility line. The language "shall include, but is not limited to" indicates that there may be other means of "clear evidence". The exact nature of what should be considered "clear evidence" will be fact dependent. Visual evidence of an unmarked utility line may include for a telephone utility, a telephone pedestal; and for a gas utility, a meter or permanent gas marker. The evidence must be observable. In addition, knowledge by an excavator that there is a utility line present or the presence of faded locating marks are sufficient, in our judgment, to require an excavator to make the additional call to the notification center required by § 56-265.24 C of the Code of Virginia. We will therefore adopt Rule 170 (new Rule 160) as set out in Exhibit MT-1.

Rule 200 6 - Hand Digging During
Trenchless Excavation

Rule 200 6 (new Rule 190 6) requires an excavator conducting trenchless excavation to expose all utility lines that will be in the bore path by hand digging to establish the utility lines' location prior to commencing a bore. For parallel type bores, the Rule requires excavators to expose the utility line by hand digging at reasonable distances along the bore path.

The Cooperatives have expressed concern in their testimony that they may not be permitted to hand dig in environmentally sensitive areas. See Exhibit AW-7 at 5-6. Tr. at 110-111. The Staff has agreed to work with the Cooperatives to address their concerns about hand digging in wetlands and other protected areas when trenchless excavation techniques are employed. Tr. at 71.

We recognize that other regulatory authorities may issue permits prescribing how an excavation may be conducted by an excavator. Section 56-265.29 provides that compliance with the Underground Utility Damage Prevention Act will not exempt any operator or person from the operation of any other applicable laws, ordinances, regulations or rules of governmental and regulatory authorities having jurisdiction, "unless exempted by such other laws, ordinances, regulations, or rules as a result

of" compliance with the Act. Some regulatory bodies with jurisdiction over excavation may not permit the use of hand digging during trenchless excavation. Consequently, we will revise Rule 200 6, now renumbered as 190 6, as follows:

[Unless prohibited by other laws, ordinances, regulations, or rules of governmental and regulatory authorities having jurisdiction,] the excavator shall expose all utility lines which will be in the bore path by hand digging to establish [the underground utility line's] location prior to commencing bore. For a parallel type bore, [unless prohibited by other laws, ordinances, regulations, or rules of governmental and regulatory authorities having jurisdiction,] the excavator shall expose the utility line by hand digging at reasonable distances along the bore path;

Rule 210 - Maintenance of
Reasonably Accurate Installation
Records by Operators

Proposed Rule 210 (new Rule 200) would require all operators to maintain reasonably accurate installation records for all lines other than service lines installed after July 1, 2001. The wording of this Rule created confusion as to which utilities must maintain records. See e.g., Exhibit VP-6 at 12; Exhibit CGV/VNG-13 at 15-16. We believe the Rule should require operators to maintain reasonably accurate installation records for all underground utility lines installed after July 1, 2001, other than underground electric, telecommunications, cable TV, water, and sewer service lines to single family dwelling units.

Reasonably accurate installation records should assist operators and their contract locators as they mark the approximate horizontal locations of their underground lines, thus fulfilling the duties imposed upon them by § 56-265.19 A of the Code of Virginia. We agree that the Rule proposed by the Staff could be misconstrued. Therefore, we will revise Rule 210 (new Rule 200) as follows to require operators to maintain reasonably accurate installation records for all underground utility lines installed after July 1, 2001, with the exception of electric, telecommunications, cable TV, water, and sewer service lines to single family dwelling units:

~~[For all new underground utility lines, excluding electric, phone, cable TV, water and sewer service lines, installed after July 1, 2001, the~~ The] operator shall prepare and maintain reasonably accurate installation records of the [underground] utility ~~[line-lines installed after July 1, 2001-, other than electric, telecommunications, cable TV, water, and sewer underground service lines connected to a single family dwelling unit. These records shall indicate if all or a portion of the utility line has been abandoned.]~~

Accordingly, IT IS ORDERED THAT:

(1) The Rules for Enforcement of the Underground Utility Damage Prevention Act, appended hereto as Attachment A, are hereby adopted, effective July 1, 2001.

(2) A copy of this Order and the Rules adopted herein shall be forwarded to the Virginia Register of Regulations for publication.

(3) There being nothing further to be done in this matter, this case shall be dismissed from the Commission's docket of active proceedings, and the papers filed herein shall be placed in the Commission's file for ended causes.

STATE CORPORATION COMMISSION
Division of Energy Regulation

Page 1 of 17

CHAPTER 309.
RULES FOR ENFORCEMENT OF
THE UNDERGROUND UTILITY DAMAGE PREVENTION ACT.

PART I.
GENERAL PROVISIONS.

20 VAC 5-309-10. Purpose.

These rules delineate procedures used by the State Corporation Commission (commission) to enforce the provisions of Chapter 10.3 (§ 56-265.15 et seq.) of Title 56 of the Code of Virginia, also known as the Underground Utility Damage Prevention Act (Act). The rules further detail certain standards and requirements for the protection of underground utility lines to facilitate the commission's enforcement of the Act.

20 VAC 5-309-15. Definitions.

The following words and terms when used in this chapter shall have the following meanings, unless the context clearly indicates otherwise:

["Abandoned utility line" means an underground utility line that is no longer used in connection with storage or conveyance of products listed under the definition of "utility line" in § 56-265.15 of the Code of Virginia and is physically disconnected from the operating system.]

"Division" means the State Corporation Commission's Division of Energy Regulation.

"Installation records of a utility line" means maps, drawings, diagram, sketches, or any other depictions or descriptions of an underground utility line that reflect the location at the time of installation in a reasonably accurate manner.

"Locate" or "marking" means an operator's or its contract locator's markings of an underground utility line.

["Serious impact on public health" means any condition involving a water or sewer utility line that creates, or may create, a danger to the health and well being of the public. "]

PART II. **ENFORCEMENT.**

20 VAC 5-309-20. Report of probable violations.

Any person, as defined in § 56-265.15 of the Code of Virginia, may report probable violations of Chapter 10.3 of Title 56 to the State Corporation Commission, Division of Energy Regulation (division). The reports of probable violations may be submitted to the division in writing, by phone, fax, e-mail, or in person. All written reports of probable violations shall include the information requested on SCC Form DPA-1, if available. All probable violations shall be

reported to the division within 30 days of a person becoming aware of the circumstances constituting the probable violations.

[20 VAC 5-309-30. Commission staff investigation of probable violations.

Upon receipt of a report of a probable violation, the Commission staff ("staff") shall conduct an investigation to examine all the relevant facts regarding the reported probable violation. The investigation may include, among other things, records verification, informal meetings, teleconferences, and photo-documentation. Responses to reports of probable violations may be provided to the division in writing, by phone, fax, e-mail or in person. Upon completion of the investigation, the staff shall review its findings and recommendations with the Advisory Committee established in accordance with § 56-265.31 of the Act.]

20 VAC 5-309-40. Advisory Committee review of probable violations.

A. The Advisory Committee (committee), established by the commission, shall meet on a periodic basis to review probable violations of the Act and the staff's findings and recommendations relative to such violations. Upon determination of either the staff or the committee that a violation may have occurred, and that an enforcement action is required, the staff shall take one or more of the following actions:

1. Issue a warning letter to the person alleged to have committed the violation (respondent);
2. Issue an information letter to a county, city, or town alleged to have committed the violation;
2. 3. Enter settlement negotiations with the respondent. Upon reaching agreement on settlement terms, the division shall present the proposed settlement to the commission for final acceptance or rejection; or
3. 4. Request the issuance of a "Rule to Show Cause" order pursuant to Rule 4:11 (5 VAC 5-10-230) of the commission's Rules of Practice and Procedure.

B. In the event that the staff but not the committee recommends enforcement action [against a probable violator], [notwithstanding 20 VAC 5-309-40 A3,] the staff may [~~request the commission to issue~~ not pursue a settlement with the probable violator absent the initiation of] a rule to show cause [~~. to make a final determination regarding any alleged violations of the Act, and shall, as part of its request for enforcement action,~~ As part of its request for a rule to show cause, staff shall] report to the commission the committee's [~~recommendation~~ recommendations] and reason or reasons [~~therefor~~ for the committee's recommendations].

C. As soon as practicable after its establishment, the committee shall develop and implement a set of bylaws. These bylaws shall delineate the committee's

practice and procedures relative to performing the duties assigned by the commission, including the review of probable violations of the Act.

D. If deemed necessary, the committee shall establish one or more subcommittees of experts in the operations covered by the Act. These subcommittees shall assist the committee in performing its assigned duties.

20 VAC 5-309-50. Commission action.

A. The commission may accept or reject a proposed settlement to resolve probable violations of the Act. If the commission rejects a proposed settlement, a public hearing will be scheduled to receive evidence and take appropriate enforcement action as provided by the commission's Rules of Practice and Procedure (5 VAC 5-10-10 et seq.).

B. If the commission finds, after a hearing, that a violation has occurred or is continuing, it may issue a remedial order. The remedial order may direct the party or parties to take any action which is consistent with such party's or parties' obligations under the Act, including the payment of a civil penalty as provided by § 56-265.32 of the Code of Virginia. A remedial order issued by the commission under this section shall be effective upon issuance, in accordance with its terms, unless stayed, suspended, modified or rescinded.

C. If the commission finds that a violation has occurred or is continuing and presents an immediate potential danger to life, health, property, or essential public

service, the commission may issue a temporary injunction and schedule a hearing and require the respondent to show cause why it should not be enjoined on account of the alleged violation or violations of the Act.

20 VAC 5-309-70. Petition for reconsideration.

Any person subject to an order from the Virginia State Corporation Commission may petition the commission for reconsideration of its order under Rule 8:9 (5 VAC 5-10-610) of the commission's Rules of Practice and Procedure.

[PART III.]
ADMINISTRATIVE RULES.

20 VAC 5-309-90. Data request to the division.

Upon request, the division shall provide to any person information or documents gathered by the division in the course of the division's investigation of probable violations under the Underground Utility Damage Prevention Act. Such documents or information may include a list of violations and probable violations of the Act, provided that such information or documents have not been determined by the commission or a court of competent jurisdiction to be confidential or privileged.]

PART [IV III].
REPORTING PROBABLE VIOLATIONS OF THE ACT BY NONGAS OPERATORS.

20 VAC 5-309-[100 90]. Reporting requirements for electric operators.

All operators of electric utility lines shall report all probable violations of the Act to the division involving damages [~~impacting~~ affecting] 1,000 or more customer meters and/or resulting in injury [requiring in-patient hospitalization] or fatality.

20 VAC 5-309-[110 100]. Reporting requirements for telecommunication operators.

All operators of telecommunication utility lines shall report all probable violations of the Act to the division involving damages to [underground] outside facilities affecting 1,000 or more access lines.

20 VAC 5-309-[120 110]. Reporting requirements for cable TV and cable TV [~~and~~] telecommunication operators.

All operators of cable TV and cable TV [~~and~~] telecommunication utility lines shall report all probable violations of the Act to the division involving damages to [underground] outside plant facilities [~~impacting~~ affecting] 1,000 or more customers.

20 VAC 5-309-[130 120]. Reporting requirements for water [~~and~~ or] sewer operators.

All operators of water [~~and~~ or] sewer utility lines shall report all probable violations of the Act to the division involving damages resulting in an injury [requiring in-patient hospitalization], fatality, or having a serious impact on public health.

PART [V IV].
EMERGENCY EXCAVATION OR DEMOLITION.

20 VAC 5-309-[140 130]. Emergency excavation or demolition.

When excavation or demolition is required during an emergency as defined in § 56-265.15 of the Code of Virginia, all reasonable precautions shall be taken to protect underground utility lines that may be located at the site of the excavation. These precautions shall include, but are not limited to, the following:

1. Dispatched personnel or crews responding to the emergency shall notify the notification center and request an emergency locate of the underground utility lines at the earliest reasonable opportunity;
2. After arriving at the site, the person responding to the emergency shall determine the need for immediate action;

3. If immediate action is required, all reasonable precautions shall be taken to protect the underground utility lines. These actions shall include, but are not limited to, the following:

- a. Conduct a thorough site assessment to determine the location of underground utility lines;
- b. Locate the underground utility lines with acceptable equipment, if possible;
- c. Hand dig around the underground utility lines;
- d. Directly notify the utility line operators, if necessary; and
- e. If prudent, the excavator shall wait for marking of the excavation area by operators having utility lines in the excavation area.

PART [VI V].
MARKING OF UNDERGROUND UTILITY LINES.

20 VAC 5-309-[150 140. Temporary marking Marking] of underground utility lines.

All [temporary] markings shall, at a minimum, conform with the requirements of this [article part].

20 VAC 5-309-[160 150]. General marking requirements.

- A. All markings shall be suitable for their intended purpose for a period of 15 working days from the time of notification by the excavator to the notification center.
- B. Markings shall be made at sufficient intervals to clearly indicate the approximate horizontal location and direction of the underground utility line. However, the distance between any two marks indicating the same utility line shall not exceed 20 feet. Site conditions or directional changes of the underground utility line shall be considered to determine the need for shorter distance between marks.
- C. Markings of underground utility lines shall be by means of stakes, paint, flags, or combination thereof. The terrain, site conditions, and the type and extent of the proposed excavation shall be considered to determine the most suitable means to mark underground utility lines.
- D. Paint marks shall be approximately 8 to 10 inches in length and one to two inches in width except when "spot" marking is necessary.
- E. A minimum of three separate marks shall be made for each underground utility line marking.
- F. [~~All valve~~ Valve] box covers [that are at grade and visible] shall be marked with the appropriate color in accordance with the Act.

G. If in the process of marking an underground utility line, a customer-owned underground utility line [of the same type] is discovered, the operator or its contract locator shall make ~~every~~ a reasonable] effort to contact the [excavator or the] customer to advise [him] of the presence of the line.

H. Where the proposed excavation crosses an underground utility line, markings shall be at intervals that clearly define the route of the underground line.

I. All markings shall extend ~~[at least 10 feet, if possible]~~ if practical, a reasonable distance] beyond the boundaries of the specific location of the proposed work as detailed on the ticket.

~~[J. In an area designated as a historic location, stakes or flags with appropriate color coding shall be used instead of paint, to the extent practical.]~~

~~[K.J.] If the use of line marking ~~[would be]~~ is] considered damaging to property (driveways, landscaping [, historic locations to the extent boundaries are known, ~~if known]~~), "spot" marking or other suitable marking methods shall be used.~~

~~[L.K.] Markings shall be valid for an excavation site for 15 days from the time of notification by the excavator or until one of the following events occurs:~~

1. The markings become faded, illegible or destroyed; or
2. ~~[An]~~ If the markings were placed in response to an] emergency[, ~~condition~~ and the emergency condition ~~no longer exists~~ has ceased to exist].

~~[M.L.] All~~ Where permitted by the operator's records, all utility lines of the same type in the same trench owned by the same operator shall be marked individually or by a single mark. If a single mark is used, the number of the utility lines shall be indicated at every other mark.

~~[N.M.] Operators or their contract locators shall use all [available] information[, including but not limited to the installation records of utility lines, necessary] to mark their facilities accurately.~~

~~[O.N.] Markings of an underground pipeline greater than 12 inches in nominal outside dimension shall include the size in inches at every other mark.~~

~~[P.O.] Duct structures and conduit systems shall be marked in accordance with the horizontal marking symbols for such structures and conduit systems set out in the National Utility Locating Contractor's Association's ("NULCA's") standards.~~

~~[Q.P.] In areas where marks would be destroyed, offset markings shall be made using horizontal marking symbols by NULCA's marking standards.~~

PART ~~[VII VI]~~.
SUPPLEMENTAL RULES, ETC.

20 VAC 5-309-~~[170 160]~~. Clear evidence.

"Clear evidence" as used in § 56-265.24 C of the Code of Virginia shall include, but is not limited to, visual evidence of an unmarked utility line, knowledge

of the presence of a utility line, or faded marks from previous marking of a utility line.

20 VAC 5-309-[180 170]. Notification center data update.

Every operator required by § 56-265.16:1 A of the Code of Virginia to join the notification center shall provide [an update of the data relative to the operators' utility lines] to the notification center [data that will allow proper notification to the operator of excavation near the operator's utility lines. This data shall be provided] as soon as possible, but no later than 15 days after [a utility line is installed an operator installs or acquires underground facilities it had not previously identified to the notification center. In the case of sanitary sewers, the data shall be provided no later than 15 days after the utility line is accepted by the operator].

20 VAC 5-309-[190 180]. Excavator's responsibilities to avoid damage, dislocating or disturbances of utility lines.

Any person excavating around underground utility lines shall take all reasonable steps to protect such utility lines. These steps shall include, but are not limited to, the following:

1. The excavator shall plan the excavation in such a manner to avoid damage to, and minimize interference with, underground utility lines in and near the construction area;

2. The excavator shall maintain a reasonable clearance, to include the width of the utility line, if known, plus 24 inches, between the marked or staked location of an underground utility line and the cutting edge or point of any mechanized equipment, considering the known limit of control of the cutting edge or point to avoid damage to the utility line; and

3. The excavator shall provide proper support for underground utility lines during excavation activities. During backfill operations, the excavator shall use ~~proper~~ the same or similar backfill material [that was originally around the utility line], ensure there is proper compaction around the utility line, ~~[and] protect all [utility warning tapes and]~~ tracer wires [, and protect or replace warning tapes].

20 VAC 5-309-[200 190]. Requirement for trenchless excavation.

Any person conducting trenchless excavation shall take all reasonable steps necessary to protect and support underground utility lines. These steps shall include, but are not limited to the following:

1. The excavator should verify that all utility lines in the area are marked;
2. The excavator shall ensure that bore equipment stakes are installed at a safe distance from marked utility lines;

3. When grounding rods are used, the excavator shall ensure that they are installed at a safe distance (at least 24 inches plus the width of the utility line, if known) away from the marked or staked location of utility lines;
4. The excavator shall ensure sufficient clearance is maintained between the bore path and any underground utility lines during pullback;
5. The excavator shall give special consideration to water and sewer systems within the area that cannot be located accurately;
6. [~~The~~ Unless prohibited by other laws, ordinances, regulations, or rules of governmental and regulatory authorities having jurisdiction,] the excavator shall expose all utility lines which will be in the bore path by hand digging to establish [the underground utility line's] location prior to commencing bore. For a parallel type bore, [unless prohibited by other laws, ordinances, regulations, or rules of governmental and regulatory authorities having jurisdiction,] the excavator shall expose the utility line by hand digging at reasonable distances along the bore path;
7. The excavator shall ensure the drill head locating device is functioning properly and within its specification;
8. The excavator shall visually check the drill head as it passes through potholes, entrances, and exit pits; and,

9. If the depth indicated by the locating device is lower than the bottom of the pothole or pit, the excavator shall cease boring until the hole/pit can be hand excavated further to maintain a visual inspection of the drill head.

20 VAC 5-309-[210 200]. Operator's responsibilities to maintain accurate records.

[For all new underground utility lines, excluding electric, phone, cable TV, water and sewer service lines, installed after July 1, 2001, the The] operator shall prepare and maintain reasonably accurate installation records of the [underground] utility [line—lines installed after July 1, 2001, other than electric, telecommunications, cable TV, water, and sewer underground service lines connected to a single family dwelling unit. These records shall indicate if all or a portion of the utility line has been abandoned.]

20 VAC 5-309-[220 210]. Responsibility to protect and preserve marking.

Every excavator [should shall] be responsible to reasonably protect and preserve markings from the time the excavator begins work until markings are no longer required for the proper and safe excavation near the utility line.

20 VAC 5-309-[230 220]. Excavator site inspection.

Prior to excavation, excavators shall verify they are at the correct location and shall verify locate markings and, to the best of their ability, check for unmarked

utility lines. If unmarked utility lines are identified, the excavator shall comply with the requirements of § 56-265.24 C of the Code of Virginia.